

MINUTES

CONFERENCE COMMITTEE SUBJECT: H 599aa

DATE: April 2, 2008

TIME: 8:00 a.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Brent Hill, and Senators Joe Stegner and David Langhorst and Chairman Dennis Lake, and Representatives Jim Clark and Bill Killen

**MEMBERS ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Hill** called the meeting to order at 8:10 a.m. Roll call was taken with a quorum of all members present.

Chairman Hill welcomed Senator Bart Davis, Senate Majority Leader, to go over some of the procedures and processes for the Conference Committee.

Senator Davis said he will go over some of the ground rules. Joint Rule 10 and Joint Rule 11 outline the procedures. Senator Davis referred to various sections in Mason's Legislative Manual that are controlling.

Senator Davis noted that the last Conference Committee met on April 1, 2005. It was also a House bill that was amended in the Senate where the House chose not to concur to the amendment. It is a good templet for this meeting.

Section 769: Appointment of Conference Committee - already in place.

Section 770: Provides the components of the Conference Committee.

-2. A committee on conference from each of the two houses meeting together is not a joint committee but a joint meeting of two committees. The quorum of the committee on conference is the majority of the members of each committee. That is going to be important as you work through the process.

-3. Because the two houses have equal authority, it is not proper for either to appoint the time and place for a conference. The Chairman from the committee of the originating body is responsible for setting up the meeting. That responsibility was carried out.

Section 771: When the conference committee has agreed on its report, an identical report is made to each house by the committee from that house. The report shall be affirmatively signed by a **majority of the members** appointed by each chamber. There needs to be a concurrence of at least two from each body in order for this conference committee to

be successful. It is important to note that this is a highly privileged committee.

Section 772: The final passage of a bill upon which the vote is required to be taken by "yeas" and "nays" is the vote by which each house adopts it after final reading, and not the vote by which the house in which it originated may subsequently concur in amendments made by the other house. In 2005, the report of the special committee on the Senate side was reported out as a report of the special committee. The Senate went to the seventh order of business and granted the report of the special committee and it was read. The Senate went through the proper process to get to an amended bill, so now it was a House bill amended in the Senate in which the house chose not to concur in the amendments now being amended in the Senate a second time. It came out as an amended bill and like any other bill coming from the amending order, it was then subject to being read three times, suspended on, and ultimately voted on.

In the example, the Senate spread the Committee report on the pages of the journal but, in addition, the amendments, as they came out the Senate's 14th Order, were added to the journal.

Senator Langhorst asked if there is a changed bill that comes out of this Committee that is different than the Senate amended version. Will it go back to the Senate? **Senator Davis** said the body that gets to act on it last is the body in which the bill originated.

Senator Stegner referred to Section 770, Conference Committees, #2, "In voting in a conference committee, the committee of each house votes separately. The committee on conference from each house submits the report to the house from which it was appointed." In the past that has been a joint report; do you agree that it should be a joint report? **Senator Davis** said historically, it is a joint report and it must be signed by at least two members of each body.

Chairman Hill thanked Senator Davis for his expertise and asked for comments from Chairman Lake.

Chairman Hill reviewed Joint Rule 10 about conference committees. It says "if both houses adhere to their disagreement," that is, we agree to disagree, "after the vote of the joint committees of conference, the bill or joint resolution shall be considered lost." This is the place of last resort. If we do not agree, the bill is "dead." If we fail, we fail our colleagues in both the House and the Senate and we will go home failing every business in the State of Idaho. Our colleagues are expecting this committee to give them something to vote on and then they will be responsible for their individual votes. We are representing all of the people of Idaho by being on this Committee. Personal views, to some extent, must be put aside and we must do what is best for our caucuses. We are not representing our own views and not the views of leadership; we are representing the people of Idaho.

Chairman Hill asked Jeff Youtz to assist with the report for the Committee.

Relating to Personal Property Tax Relief to resolve issues on H 599aa as amended in the Senate but the House did not agree.

Because the House is not concurring with the amendment, it is appropriate that the House members identify the issues with the bill as it is presently constituted.

Chairman Lake said there are six issues:

- 1) Why are operating properties exempted?
- 2) Why \$75,000 instead of another number?
- 3) Why isn't there a "trigger?" The original H 599 had a mechanism that, unless there was a 5% growth in revenues, the tax relief would not happen. Now there is property tax relief even if there isn't any money.
- 4) Why isn't there a cap on assessed valuations? This may be problematic but it needs to be discussed.
- 5) How do we handle the add-back reimbursement provision for the budget cap on property tax when computing 3% growth?
- 6) Why does each site get a separate exemption?

Chairman Hill asked if Representatives Clark and Killen or members of the Senate Committee had anything to add.

#5

Chairman Hill designated #5 as the first item for discussion. In *section 63-802 (1) (a), Idaho Code* having to do with Limitations on Budget Requests by local government entities, the following words were added: "plus the dollar amount of moneys received pursuant to *section 63-3638 (12), Idaho Code*, for the past tax year," **Chairman Hill** referred back to the original bill and pointed out the language in *section 3, 63-602KK (b) (iv)* p.8 and p.27 and asked Mike Nugent to confirm that this provision was left in the newer version of the bill and that it did have the same meaning. **Mike Nugent** responded that it was the same. The language in H 599aa was removed and the cap language was put in 63-802 in the most recent version. **Chairman Hill** asked, in your opinion, does the old language and the new language accomplish the same thing? **Mr. Nugent** answered, yes they do. There could be a situation, depending on the taxing district, when there may be the ability to double dip for that one year.

Chairman Lake stated that is where they see the problem. Under the original H 599 and last year's bill, there was a cap on valuations. This year there is not a cap on valuations. Each year from 2009 forward, the local taxing districts will tell the State how much is owed to them. Supposedly, the 3% growth will be built into that figure. Without having a cap on the assessed valuation, it appears there should not be the add back provision. **Mr. Nugent** stated that is a question of policy. **Chairman Hill** agreed. **Chairman Lake** said it appears local governments do have the opportunity to increase the budgets twice, once by including the valuation received from the State on the assessed valuations with the 3% limitation, which is distributed out to the taxing districts, and second, they can come back to the State the next year and present a new bill for personal property taxes on the roll that year. **Chairman Hill** asked if removing the new language (lines 8-9, p13, in Draft Not Officially

Engrossed [see NOTE above for handouts]) in 63-802 (1) (a) would solve the problem. **Representative Killen** said that would solve the problem. **Mr. Nugent** asked: then there would be no amendment to 63-602? **Chairman Hill** concurred.

Senator Stegner asked if someone from the Idaho State Tax Commission (ISTC) could explain how this worked. **Ted Spangler**, ISTC said that if personal property tax revenues are being replaced, then those moneys should be claimed as part of the budget cap but not more or less. This is outlined in the bill. If all reference to 63-802 is struck, then it would seem the budget authority of the taxing districts would shrink because they wouldn't get to count the replacement moneys as part of the budget base. **Chairman Hill** said he didn't think that was the desire of anyone on the Committee. **Chairman Lake** said he agreed with Mr. Spangler if the assessed valuations were capped. However, these amendments do not cap the assessed valuations. An entity can come back each successive year with new valuations and use those evaluations, including the 3% growth factor in budgets, to accommodate inflation, etc. The growth factor is built into the valuations they apply for each subsequent year, so they are getting it twice. **Chairman Hill** asked if it is their desire that the 3% can't be counted in the base at all. **Chairman Lake** said, in this situation, it would be their desire to not count them because they are getting 3% on next year's report of personal property.

Senator Stegner said personal property could go down and to not allow that money to be counted, in this case, would be treating it differently than how it was treated with the agriculture (ag) exemption and it should be consistent. There is no reason to penalize districts in terms of total assessed value of the district just because part of the money is coming from the State in the form of a replacement and not from the taxpayer.

Senator Langhorst asked Mr. Spangler how, from the time the ag exemption was enacted and the State replaced those funds with general funds, the amount changed over time. **Mr. Spangler** deferred to Dan John, ISTC. **Mr. John** said the ag replacement number was capped so the amount of reimbursement never changes. **Chairman Lake** said that if valuations were being capped, it would be appropriate to allow the 3% growth factor each year. But valuations are not being capped. Any given tax unit could, theoretically, collect more this year than last year because the values of the properties in the mix could go up at the same rate as the 3%. Valuations could go up or down. **Chairman Hill** asked if the intent is to change the way it is working now. **Chairman Lake** said since values are not being capped, it is not appropriate to add back the growth. **Chairman Hill** said as it stands right now, before H 599 is passed, this provision keeps things the way they are right now. Do you want to change it? **Chairman Lake** answered yes, we are changing it.

Senator Langhorst asked if the purpose of the change is to limit growth in county budgets. **Chairman Lake** said the purpose of the change would be to prevent the counties from growing their budgets by the 3% of the value the State reimburses them and in addition, come back to the State with a new personal property tax figure of those values up to \$75,000 and

collect again on the greater amount. **Senator Langhorst** said that, historically, personal property values have been going down over the long term. Would it be the intent to cap it for those counties with a reduction in property values as well? **Chairman Lake** said they would be freezing valuations. **Senator Langhorst** stated that where personal property is going down, that would establish a limit on budget growth. Where personal property values are going up, we are not going to allow that growth in county budgets. **Representative Clark** asked: how can you allow moneys coming back to the county through sales tax distribution to be added back in to the 3% issue? Is that true growth or is it a shift? **Chairman Hill** responded that it is true growth. Previous bills from the House said it would be treated as property tax revenues and this amendment agrees with that. Is this a new issue? **Chairman Lake** said the difference is, in all other instances, valuations were capped and this one is not. That is the problem.

Chairman Hill stated that personal property tax reimbursed from the State will go up and that budgets will grow. **Representative Clark** confirmed the statement.

#6

Chairman Hill referred to #6 regarding the site-by-site exemption. What are the issues? **Chairman Lake** asked: Why should one company have multiple exemptions and another company have one? Taxes are done as a company, not as a single site. There might be an easy solution by just having all the sites in one county treated as one.

Senator Stegner said initially there was some concern about building in an incentive to set up business structures that would be counted as a separate entity. **Chairman Hill** said that their first question was how is the exemption going to be treated and this seemed the fairest way to do it. It was explicit that the property had to be at the site and had to be operating at the site. **Chairman Lake** asked Tony Ponelli, Idaho Association of Counties, from an administrative standpoint, what would be the easiest for the counties to work with? Would it be easiest to do one company, one county or sites? **Mr. Ponelli** said the easiest from the assessors' standpoint is site by site.

Representative Killen said the current process does involve site specific lists so the mechanics for sites would seem the most logical.

Representative Clark said there was language in the original bill about "Sham Operations," which was struck in the amendments. **Chairman Hill** agreed, but if site by site is used, that language would be unnecessary.

Mr. Spangler called attention to the draft bill, p4, line 50, to the reference of section 267 of the Internal Revenue Code. That section deals with related entities and has a much more detailed description than the House amendment. A provision is still in the bill.

Senator Stegner said the discussion is helpful and further points will be discussed before a final decision can be made.

- #4** **Chairman Hill** opened discussion for #4 regarding a cap on valuation totals. **Chairman Lake** said there was a question in their committee that in previous legislation, there was a starting point on valuations but that is difficult when there is only a partial exemption. He requested to pass over this one.
- #3** **Chairman Hill** said #3, the "trigger," would be the next topic of discussion.
- Chairman Lake** said the trigger is one that is important to them and to the Legislature. We are in the position of using budget stabilization money to pay property tax relief. It would seem prudent to have a trigger mechanism that this only becomes effective if the economy improves. **Chairman Hill** asked if they are talking about the first year to implement it or a trigger every year. Every year would be very difficult for counties to plan for. **Chairman Lake** said the trigger is for the first year.
- Chairman Hill** asked what the appropriate trigger would be—5%? **Chairman Lake** said 4 - 5%, similar to the first year. **Senator Stegner** requested that there could be a possible agreement on a trigger.
- #2** **Chairman Hill** addressed #2: why \$75,000 for a cap? The basis was established to keep the amount below the homeowners' exemption (HOE), which should be just less than \$100,000 for 2009. Would the House feel more comfortable with a different number? **Chairman Lake** said they would like the amount to be \$100,000. That is less than the current HOE but more than the coming year. **Chairman Hill** said they would not make any decisions at this point, but would come back to this.
- #1** **Chairman Hill** addressed issue #1 - Why were operating properties exempted? **Senator Stegner** said this is an issue that is important to the Senate. The regulating utilities don't pay personal property taxes; they are just a pass through. This would not be a significant amount of money. The big question is how to allocate those revenues among the counties. From an operations and implementation phase, the Senate is far more comfortable in exempting them out. There is also the consideration of future actions. **Chairman Lake** said the issue is twofold: 1) Where is the site, and 2) there may be future exemptions where this would be a problem. **Senator Stegner** concurred.
- Representative Clark** asked what is the probability of a lawsuit? **Mr. Spangler** said that is a question of guessing what, when, and whether a taxpayer may or may not sue us. There may be a possibility that the exclusion from this exemption is improper and they would be successful in a lawsuit. The question then is what is the remedy? That would have to be determined at the time.
- Russ Westerberg**, a representative for a power utility, addressed this issue. He was not discussing whether utilities should be excluded or included, but discussing the difference in those properties. Utilities are centrally assessed by the ISTC, unlike all other personal property, which is assessed by the county assessor. Some utilities operate in more than one state and it is the job of the various states to determine the unit value

of that utility and then distribute proportionately to each jurisdiction. In this case, the reduction would be small and it would have to be shared with all the other states involved. There is another substantive difference in operating properties. They pay the sales tax up front when they acquire the property. There are large differences between operating property and other personal property.

Representative Clark asked if anyone had calculated the cost of adding the operating entities back in. **Chairman Hill** responded they had not, since it would depend on what this Committee determined as the site. **Chairman Lake** pointed out that there are also competing operating companies on both sides of the question, i.e., cable vs. telephone or operating vs. utility.

BREAK:

Chairman Hill announced that there would be a nine-minute break. This would be a good opportunity for a short conference with members of each Committee.

RECONVENE:

Chairman Hill said there is the sense that the two committees are not very far apart. The attitude of cooperation is commendable. At this time, as each issue is reviewed, there will be a straw vote, not binding, until the end and then there will be a vote as a package. What is the will of the Committee on any or all issues?

Senator Stegner stated that the Senate would consider an increase in the exemption. There is a difference between \$75,000 and \$100,000. A compromise of \$87,500 would be appropriate.

The Senate would be interested in considering a first year trigger that would be above the budget stabilization cap of 4% so they would suggest 4.5%, but that is negotiable.

The site issue is up for discussion and reasonable compromise could be a company by county limit.

The Senate, in his opinion, does not see any areas to offer a middle ground for the other three issues. They would request that they stay as written.

Senator Langhorst said he would listen but it is important to keep the counties harmless.

Chairman Hill said "straw vote, not binding," who could support an exemption of \$87,500? **Chairman Lake** said "let's just go to \$100,000." **Senator Stegner** said, depending on other points, it is still up for negotiation from the \$87,500.

Chairman Lake said the primary issue in the House was the issue of the trigger. That one is very important because it has a large effect on the Legislature.

Going to county wide sites would be a good compromise.

The \$100,000 versus the other amounts, House expects \$100,000. Less than that would be a problem.

Chairman Hill asked on a straw vote basis, does everyone agree with a trigger? Both Committees voted yes.

Depending on how other issues are resolved, would everyone agree to a county-wide exemption? Both Committees voted yes.

Chairman Hill said there needs to be further discussion on the operating property. That is a very important issue to the Senate, probably one or two at the top of the list.

Chairman Lake stated their big concern was singling out a class of property owners and not including them. It is not an economic issue.

Chairman Hill asked, considering other issues, does the House feel they could work on this one? **Chairman Lake** said yes. He may disagree in treating them separately, but would not cause an impasse over this issue.

Senator Langhorst addressed the issue of the budget cap. The Legislature is making a decision that affects county budgets and they are not at the table. Even though there will be a cap, personal property is a big portion of some counties budgets. In principle, their 3% budget growth should not be hurt by the actions that are taken here. It is the hold harmless concept.

Senator Stegner said the discussion today is an extremely small step in consideration of how personal property tax affects businesses and citizens – what are businesses but citizens that are paying taxes? I hope this is not the end, we should continue working on this issue. We must find creative ways to define personal and real property. It is impossible to remove the counties' tax base without significant economic ramifications. That was the problem with the original bill; it was too big a step. Whatever is agreed to in the future, part of that will be definition of terms. Part of it may be the alternatives given to counties to generate revenue. The issue of caps is part of the general argument and is one of the Senate's priorities, because we do not want to force unintended consequences on counties and districts without thinking them through and giving them proper consideration.

The cap on valuation and the 3% growth are important because there may be significant harm in some way. This is just in place, it is not enacted for another year, there is still time to reconsider and/or modify it just as we did with the ag exemption.

The Senate position is to move these two items off the table for consideration and leave the bill as is and concentrate on the issues that there is a possibility for agreement and beg leave to sit again.

Representative Clark said he has a different view of H 599. It was not just one step, it was five steps. By the time it came back to the House, there were no steps. The exemption was going to occur in 2009 regardless of what the economic outlook was. The original bill was five

steps with \$20.0 million per step and if the growth rate was not there, it could have been stopped. We always go back in and make adjustments just as we did with ag, which was amended the next year. The whole idea of caps on valuation is not a stopping point, the problem is on the 3% number which is hard to even understand. We are relatively close.

Another issue is the intent language. There should be intent language stating that the matter of exemptions for personal property will be pursued in the future.

Chairman Lake asked Senator Stegner and Representative Clark if they were both in agreement that, as part of the report, there should be some intent language about what occurs in the future with personal property taxes?

Senator Stegner said he has no problem stating in the report of this Committee and agreeing to a statement reaffirming the Legislature's interest in removing personal property tax in general and working on that issue until it is accomplished. There is no problem adding that intent into the report of the Committee and he applauds the effort.

Senator Langhorst said we have started off with good, negotiable points. Introducing intent language into the discussion when it is not binding is not something we should get "hung up" on.

These two statements are not as alike as they sound. One of the reasons this bill is small in fiscal impact is because we can't afford it. Statements that we are going to do it are not appropriate. There are finite, well-defined issues on the table; there is not a good reason to expand those in this Conference Committee.

MOTION:

Chairman Lake moved to make the following amendments to the amendments:

- 1) Change the maximum amount of assessed valuation on personal property that is reimbursed from \$75,000 to \$100,000.
- 2) Provide a trigger mechanism that the legislation does not become effective until the growth in the present year is 5% greater than the growth in the previous year.

Chairman Hill stated that once it is there, it stays, but it doesn't happen until there is 5% growth. **Chairman Lake** agreed.

- 3) The exemptions will be granted by company by county, not by site.

Representative Clark seconded the motion.

Chairman Lake stated that there is a good understanding of the issues. He will agree to let the 3% growth go because he wants the trigger more than anything.

If this is approved by the Committee, there will be a meeting with Legislative Services to craft the necessary legislation. **Chairman Hill** said

that they both would meet. Also, Mr. Nugent, do you understand this motion sufficiently or do you have questions that the Committee as a whole needs to answer? **Mr. Nugent** questioned "company by county." Do you mean taxpayer by county? **Chairman Lake** said that is what he meant.

Senator Stegner asked if this constitutes the makeup of the report for this Committee. **Chairman Hill** responded yes. **Chairman Lake** inquired about whether or not intent language should be added. His impression was that Senator Langhorst did not want it there. **Chairman Hill** responded that he would not like to lose a signature because of the intent language. The Committee has already expressed the intent and it will be in the minutes as well as in the press that we are committed to pursue the personal property issue.

Senator Langhorst stated that he will be voting for this motion. He said he appreciated everyone's attitude and maybe they should meet more often. He said he appreciated the House members and the spirit in which this Committee approached the issues.

VOTE:

The motion carried by unanimous voice vote.

Chairman Hill announced that the report will be prepared and circulated to each member of the Committee to review and sign so it can be presented to the House and the Senate.

ADJOURNED:

Chairman Hill adjourned the meeting at 10:44 a.m.

Senator Brent Hill
Chairman



Twyla Melton
Secretary